

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYDIA MORALES and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 99-2216; Submitted on the Record;
Issued March 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a psychological condition causally related to her November 22, 1995 employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits effective March 24, 1999.

The Office accepted appellant's claim for an L3 subluxation and central disc herniation at L2-3. Appellant sustained her employment injury on November 22, 1995 and has not worked since that date. Appellant received appropriate compensation benefits.

By decision dated March 24, 1999, the Office terminated appellant's compensation benefits, stating that the weight of the medical evidence established that her injury-related disability ceased as of the date of the decision.

The Board finds that appellant has not established that she sustained a psychiatric condition causally related to the November 22, 1995 employment injury.

An employee seeking benefits under the Federal Employers' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

In a report dated August 13, 1997, Dr. Hector H. Goa, a Board-certified psychiatrist and appellant's treating physician, diagnosed that appellant had a severe depressive disorder, which disabled her from being able to work. He stated that the depression stemmed from her injury at the employing establishment.

In reports dated November 21, 1997 and January 7, 1998, the referral physician, Dr. William B. Head, a Board-certified neurologist and psychiatrist, considered appellant's history of injury and performed a mental status examination. He found "essentially normal findings, with no objective evidence of anxiety, depression or any other psychiatric condition or disorder." He diagnosed symptom magnification syndrome, manifested by a tendency to try to exaggerate pathology either of a psychiatric nature or physical nature or both. Dr. Head opined that appellant could perform her usual work.

To resolve the conflict in medical opinion evidence between appellant's treating physician, Dr. Goa, and the referral physician, Dr. Head, as to whether appellant had a work-related psychiatric condition, the Office referred appellant to an impartial medical specialist, Dr. Roger H. Brunswick, a Board-certified psychiatrist and neurologist. In his report dated October 6, 1998, Dr. Brunswick considered appellant's history of injury, performed a mental status examination and conducted three psychological tests consisting of the continuous performance test, the Portland digit repetition test and the 15 item memorization test. He diagnosed that appellant was malingering as there were no objective clinical findings to support her claimed anxiety and depression. Dr. Brunswick stated that she had some depressive and passive aggressive personality features that resulted in her focusing on her physical symptoms despite the lack of objective findings. He stated that appellant had status post physical injury to her back with various subjective complaints and psychosocial stressors in which she needed to maintain a sick role, conscious or unconscious, so as to obtain secondary gain for her family or to avoid work and obtain financial remuneration. Dr. Brunswick opined that appellant would be too overwhelmed with her symptoms to return to full-time work and recommended that she perform light-duty work for three to six months and return for a follow-up examination. He opined that appellant's psychiatric condition did not prevent her from performing gainful employment.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³ In the present case, the Office referred appellant to Dr. Brunswick to resolve the conflict in the evidence as to whether appellant had a work-related psychiatric condition. In a complete and well-rationalized report dated October 6, 1998, Dr. Brunswick opined that there were no objective findings to support that appellant had a psychiatric disability, that appellant was malingering and had the psychosocial stressor of needing to maintain a sick role, whether conscious or unconscious, so as to obtain secondary gain in the family or to avoid work and obtain financial remuneration. He opined that her psychiatric condition did not preclude her from performing gainful employment but because her symptoms overwhelmed her, she should perform part-time light duty for three to six months and

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

then be reevaluated. As the impartial medical specialist, Dr. Brunswick's opinion constitutes the weight of the evidence and supports the Office's finding that appellant is not disabled due to a work-related psychiatric condition.

Regarding the issue of whether appellant continues to be disabled due to the accepted conditions of L3 subluxation and central disc herniation at L2-3, in his reports dated February 3 and March 3, 1999 and his reports from at least July 9 through December 17, 1998, Dr. Jay R. Zaretsky, a Board-certified orthopedic surgeon and appellant's treating physician, noted that appellant continued to have low back pain and was disabled.

In a report dated October 24, 1997, Dr. Robert S. Goldstein, a Board-certified orthopedic surgeon and referral physician, considered appellant's history of injury, performed a physical examination, reviewed magnetic resonance imaging (MRI) scans dated December 6, 1995 and April 12, 1997 and an electroencephalogram (EEG) dated April 1, 1997. He found no objective findings to support the diagnoses of an L3 subluxation and an L2-3 central disc herniation. Dr. Goldstein opined that appellant's lumbosacral sprain or strain had resolved and she required no further treatment for the accepted conditions. He found she could not perform her usual work due to a nonwork-related neurological and psychological condition.

To resolve the conflict in the medical evidence between Dr. Zaretsky's and Dr. Goldstein's opinions as to whether appellant was disabled from her November 22, 1995 employment injury, the Office referred appellant to an impartial medical specialist, Dr. David H. Snyder, a Board-certified psychiatrist and neurologist. In his report dated January 11, 1999, Dr. Snyder considered appellant's history of injury, performed a physical examination, the December 6, 1995 and April 12, 1997 MRI scans and November 13, 1997 x-ray results. He opined that there were no objective changes consistent with a neurological injury resulting from the November 22, 1995 employment injury and there was no objective evidence of a lumbar radiculopathy. Dr. Snyder stated that "it was likely" that appellant sustained a lumbar strain from the November 22, 1995 employment injury. He stated there were no objective clinical findings of the accepted conditions and appellant was capable of performing her usual job full time.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.⁵

As stated above, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based

⁴ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

⁵ *Larry Warner*, 46 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

on a proper factual background, must be given special weight.⁶ In the present case, to resolve the conflict between the opinion of appellant's treating physician, Dr. Zaretsky and the opinion of the referral physician, Dr. Goldstein, as to whether appellant was disabled due to her work-related back condition, the Office referred appellant to an impartial medical specialist, Dr. Snyder, for an evaluation. In his January 11, 1999 report, after considering appellant's history of injury, reviewing the April 1, 1997 EEG and the December 6, 1995 and April 12, 1997 MRI scans of appellant's lumbar spine and performing a physical examination, Dr. Snyder opined that appellant had no objective changes consistent with a neurological injury sustained during the November 22, 1995 employment injury and no evidence of lumbar radiculopathy. Although Dr. Snyder erroneously speculated that appellant sustained a lumbar strain on November 22, 1995 inasmuch as the Office accepted that appellant sustained an L3 subluxation and a central disc herniation, he emphasized that there were no current objective findings of an L3 subluxation or L2-3 disc herniation.

On appeal, appellant contended that Dr. Snyder's report was incomplete because he did not consider an MRI scan of her brain dated December 5, 1997, which she claimed showed an "ill-defined Nodular T2 hyperintensity seen in the left parietal lobe white matter of indeterminate etiology ... which might represent a white matter infarct." Appellant contended that the MRI scan showed a neurological problem as reflected in her foot disorder. Appellant also contended that Dr. Snyder's report was incomplete because part of his report consisted of answering nine questions from the Office but the questions put to him were unknown. The MRI scan appellant referenced is not in the record. Further, appellant's foot disorder was not an accepted condition and, therefore, evidence of that disorder is not relevant to her claim. Dr. Snyder's January 11, 1999 report is sufficiently complete and well rationalized to establish that appellant is no longer disabled from the accepted conditions of L3 subluxation and a central disc herniation at L2-3. His report responded to the questions posed by the Office in its referral letter. As the impartial medical specialist, Dr. Snyder's opinion, therefore, constitutes the weight of the evidence and justifies the Office's termination of benefits.

⁶ *Kathryn Haggerty*, *supra* note 3 at 389 (1994); *Jane B. Roanhaus*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated March 24, 1999 is hereby affirmed.

Dated, Washington, D.C.
March 7, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member